

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT WHEELING**

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL J. HARRIS,

Defendant.

Criminal Case No.: 5:07-CR-22
(Stamp)

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO EXCLUDE
EXPERT TESTIMONY FOR FAILURE TO COMPLY WITH MAY 14, 2007 ORDER**

Statement of Facts

On April 4, 2007, a five-count indictment was returned against Mr. Harris. Count One alleges a violation of 26 U.S.C. §2701. Counts Two, Three, Four and Five allege violations of 26 U.S.C. §7206(1) in respect of tax returns for 1997, 1998, 1999 and 2000. On May 14, 2007, a five page order was entered pursuant to Rule 16 of the Federal Rules of Criminal Procedure. Paragraph 5 of the order provides:

On or before June 1, 2007, the government shall disclose to the defendant a written summary of testimony the government intends to use under Rules 702, 703, or 705, Federal Rules of Evidence, during its case-in-chief at trial. This summary shall describe the witnesses' opinions, the bases and reasons therefore, and the witnesses' qualifications.

To date, the government has made no expert disclosure.

Discussion of Authority

Rule 16(d) of the Federal Rules of Criminal Procedure provides that if a party fails to comply with Rule 16, the court may prohibit the party from introducing evidence not disclosed. *See, e.g., U.S. Weatherspoon*, 581 F.2d 595 (7th Cir. 1978); *U.S. v. Jackson*, 508 F.2d 1001 (7th Cir. 1975).

The May 14, 2007 order specifically provides that “on or before June 1, 2007, the government shall disclose” expert reports and the experts’ qualifications. The government has made no such disclosure. The government has not asked for an extension in which to provide expert reports.

Conclusion

On or before June 1, 2007, the government was required to disclose its expert reports. It failed to do so. It should not be permitted to produce any expert testimony at trial.

Defendant,
by counsel,

/s/ Robert J. Gaudio
Robert J. Gaudio
W. Va. Bar #7356
RR2 Box 284
Triadelphia, WV 26059
304.243.5201
rgaudiolaw@yahoo.com

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June, 2007, I have electronically filed this *Memorandum of Law in Support of Defendant's Motion to Exclude Expert Testimony for Failure to Comply with May 14, 2007 Order*, with the Clerk of Court using the CM/ECF system which will then send notification of such filing to the following:

Timothy D. Belevetz
Assistant U.S. Attorney
United States Attorney's Office
2100 Jamieson Avenue
Alexandria, VA 22314

Brian J. Samuels
Assistant U.S. Attorney
United States Attorney's Office
Fountain Plaza Three, Suite 300
721 Lakefront Commons
Newport News, VA 23606

/s/ Robert J. Gaudio
Robert J. Gaudio

AO156 - Verdict Form

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA
WHEELING DIVISION

U.S. DISTRICT COURT
FILED AT WHEELING, WV
APR 24 2008
NORTHERN DISTRICT OF WV
OFFICE OF THE CLERK

UNITED STATES OF AMERICA,
Plaintiff,

V.

VERDICT

PAUL J. HARRIS,

Defendant.

CASE NUMBER: 5:07-CR-22

WE, THE JURY, in the above entitled and numbered case, UNANIMOUSLY FIND the

Defendant, PAUL J. HARRIS, charged in the Indictment as to:

COUNT 1 Guilty _____ Not Guilty ☒ _____ ;

COUNT 2 Guilty _____ Not Guilty ☒ _____ ;

COUNT 3 Guilty _____ Not Guilty ☒ _____ ;

COUNT 4 Guilty _____ Not Guilty ☒ _____ ;

COUNT 5 Guilty _____ Not Guilty ☒ _____ .


FOREPERSON'S SIGNATURE

4/24/08
DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No.: 5:07-cr-22

PAUL J. HARRIS,

Defendant.

DEFENDANT'S NOTICE OF APPEAL

COMES NOW Defendant, Paul J. Harris, *pro se*, and provides notice of his appeal to the United States Court of Appeals for the Fourth Circuit from the *Order Denying Defendant's Motion for Costs And Fees And Request For In Camera Production Of Internal Government Memoranda*, entered in this action on July 11, 2008.

Defendant,
pro se,

/s/ Paul J. Harris
Paul J. Harris
W. Va. Bar # 4673
Fifteenth & Eoff Streets
Wheeling, WV 26003
304.232.5300

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July 2008, I electronically filed this *Defendant's Notice of Appeal* with the Clerk of the Court using the CM/ECF system, which will then send notification of such filing to the following:

Timothy D. Belevetz
Assistant U.S. Attorney
United States Attorney's Office
2100 Jamieson Avenue
Alexandria, VA 22314

Brian J. Samuels
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Robert H. McWilliams, Jr.
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United States Attorney's Office
1125 Chapline Street
Wheeling, WV 26003

/s/ Paul J. Harris
Paul J. Harris

MINUTE ENTRY

Location: _____

v.

Case No: _____

Hearing Date: _____

Judge: _____

1) Gvt/Plntf Attorney:

2) Defense Attorney:

Type of Hearing:

Judge's Findings/Rulings:

Record of Hearing, Continued: